



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

Uniform Issue List: 402.00-00

OCT - 2 2007

T:EP:RA:T3

Legend:

Taxpayer A =
Plan X =
Amount A =
IRA F =
Company M =
Date 1 =
Date 2 =
Date 3 =
Date 4 =

Dear

This is in response to your letter dated July 25, 2007, in which you request a waiver of the 60-day rollover requirement contained in section 402(C)(3)(A) of the Internal Revenue Code (the Code).

The following facts and representations have been submitted under penalty of perjury in support of the ruling requested.

Taxpayer A received a distribution from Plan X of Amount A. Taxpayer A asserts that her failure to accomplish a rollover within the 60-day period prescribed by section 408(d)(3) was due to the failure of the Plan X sponsor to provide timely and accurate information concerning the Plan X distribution of a plan loan offset of Amount A.

On Date 1, Taxpayer A received a loan of Amount A from Plan X. Amount A represented a portion of Taxpayer A's Plan X account balance. Taxpayer A subsequently resigned from employment with Company M on Date 2. Approximately one month after her termination of employment, Taxpayer A inquired about the details of her loan from Plan X in a conversation with the human resources department of Company M. Taxpayer A was informed that a notice concerning the loan of Amount A would be issued from Plan X. On Date 3, Plan X treated the loan of Amount A as a distribution of a plan loan offset amount. However, Taxpayer A was not notified of this event and did not learn of the treatment of Amount A as a distribution until she received

a Form 1099R in February 2007, which was after the expiration of the 60-day rollover period. On Date 4, Taxpayer A deposited Amount A into IRA F.

Based on the facts and representations, you request that the Service waive the 60-day rollover requirement with respect to the distribution of Amount A because the failure to waive such requirement would be a hardship and against equity or good conscience.

Section 402(c)(1) of the Code provides that if any portion of the balance to the credit of an employee in a qualified trust is paid to the employee in an eligible rollover distribution, and the distributee transfers any portion of the property received in such distribution to an eligible retirement plan, and in the case of a distribution of property other than money, the amount so transferred consists of the property distributed, then such distribution (to the extent transferred) shall not be includible in gross income for the taxable year in which paid. Section 402(c)(3)(A) states that such rollover must be accomplished within 60 days following the day on which the distributee received the property. An individual retirement account (IRA) constitutes one form of eligible retirement plan.

Section 402(c)(3)(B) of the Code provides, in relevant part, that the Secretary may waive the 60-day requirement under section 402(c)(3)(A) where the failure to waive such requirement would be against equity or good conscience, including casualty, disaster, or other events beyond the reasonable control of the individual subject to such requirement. Only distributions that occurred after December 31, 2001, are eligible for the waiver under section 402(c)(3)(B) of the Code.

Section 401(a)(31) provides the rules for governing "direct transfers of eligible rollover distributions".

Section 1.401(a)(31) -1 of the Income Tax Regulations, Question and Answer-15, provides, in relevant part, that an eligible rollover distribution that is paid to an eligible retirement plan in a direct rollover is a distribution and rollover, and not a transfer of assets and liabilities.

Section 1.402(c)(2) -2, Q&A 9 of the regulations, provides, in relevant part, that a distribution of a plan loan offset amount is an eligible rollover distribution which may be rolled over to an eligible retirement plan within the 60-day period under section 402(c)(3) of the Code.

Rev. Proc. 2003-16, 2003-4 I.R.B. 359, (January 27, 2003), provides that in determining whether to grant a waiver of the 60-day rollover requirement pursuant to section 402(c)(3) of the Code, the Service will consider all relevant facts and circumstances,

including: (1) errors committed by a financial institution; (2) inability to complete a rollover due to death, disability, hospitalization, incarceration, restrictions imposed by a foreign country or postal error, (3) the use of the amount distributed (for example, in the case of payment by check, whether the check was cashed); and (4) the time elapsed since the distribution occurred.

Amount A, as a distribution of a plan loan offset amount, was eligible to be rolled over within 60 days of the distribution of Amount A from Plan X. The information presented and documentation submitted by Taxpayer A is consistent with her assertion that she was not notified of the distribution of the plan loan offset of Amount A and her failure to timely accomplish a rollover of Amount A was due to the failure of the Plan X sponsor to provide timely and accurate information concerning a Plan X distribution of a plan loan offset of Amount A.

Thus, based on the above, pursuant to Code section 402(c)(3)(B), the Service hereby waives the 60-day rollover period found in Code section 402(c)(3)(A). As a result, the Service will treat Taxpayer A's Date 4, rollover contribution of Amount A into IRA F as a valid rollover within the meaning of Code section 402(c).

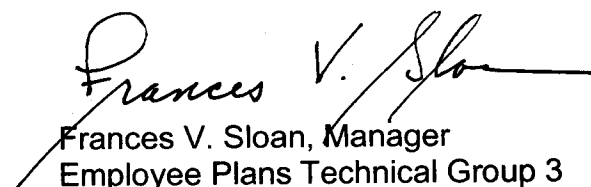
No opinion is expressed as to the tax treatment of the transaction described herein under the provisions of any other section of either the Code or regulations which may be applicable thereto.

This letter is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

If you wish to inquire about this ruling, please contact

Please address all correspondence to SE:T:EP:RA:T3.

Sincerely yours,


Frances V. Sloan, Manager
Employee Plans Technical Group 3

Enclosures:

Deleted copy of letter ruling

Notice of Intention to Disclose